A

NATIONAL UNION OF HOTEL, BAR AND RESTAURANT WORKERS PENINSULAR MALAYSIA v. SHANGRI-LA HOTELS (MALAYSIA) BHD

FEDERAL COURT, PUTRAJAYA
ZULKEFLI AHMAD MAKINUDIN CJ (MALAYA)
B RICHARD MALANJUM CJ (SABAH & SARAWAK)
HASAN LAH FCJ
ABU SAMAH NORDIN FCJ
ZAHARAH IBRAHIM FCJ
[CIVIL APPEAL NO: 02(f)-69-10-2015 (W)]
C 26 APRIL 2017

LABOUR LAW: *Trade union – Collective agreement – Respondent underwent redevelopment and repositioning exercise of old hotel – Signed collective agreement with trade union – Parties subsequently entered into supplementary agreement –*
D *Whether respondent allowed to unilaterally impose new terms of employment – Interpretation of clauses in supplementary agreement – Intention of parties – Whether collective agreement terminated upon signing of supplementary agreement – Whether collective agreement binding upon parties – Industrial Relations Act 1967, ss. 17 & 30(5)*

E The respondent, formerly known as Shangri-La's Rasa Sayang Resort ('old hotel'), owned and operated Shangri-La's Rasa Sayang Resort and Spa ('the new hotel'). The respondent went on a major redevelopment and repositioning exercise of the old hotel (redevelopment exercise) that resulted in a complete business cessation and closure of the old hotel from
F 1 December 2004. All the employees represented by the appellant, a trade union, were retrenched. The members of the appellant comprised of the employees of the old hotel and the new hotel. Dissatisfied with the retrenchment, the employees of the old hotel picketed. The respondent and the appellant agreed to negotiate and agreed on certain terms of
G retrenchment, amongst others, 100 positions of various categories offered to the retrenched employees on the opening of the new hotel. The respondent thus entered into contracts of employment with employees of the new hotel on new terms and conditions. The respondent and the appellant signed the 10th collective agreement dated 19 June 2003 ('old collective agreement') and subsequently entered into a supplementary agreement dated 13 January
H 2005 ('supplementary agreement'). The appellant disagreed with the action of the respondent on the interpretation of cls. 2.1(d) and 3.1 of the supplementary agreement and the respondent therefore applied to the Industrial Court for the interpretation of those clauses. The Industrial Court ruled that the provisions in cls. 2.1(d) and 3.1 of the supplementary
I agreement must be read together. The provision in cl. 2.1(d)(iii) did not give the respondent the power to impose unilaterally new terms of employment for the employees under the scope of the agreement. The supplementary

agreement had come to an end when the new hotel re-opened and the old collective agreement was re-enforced from the date of the re-opening of the new hotel. It was also noted by the Industrial Court that the old collective agreement had not been terminated at the time of signing of the supplementary agreement, wherein cl. 3.1 of the supplementary agreement provided that the old collective agreement 'would continue to apply as if the supplementary agreement had not been entered upon re-opening of the hotel'. On the application for judicial review by the respondent, the High Court quashed the award holding that the courts should not be overly legalistic in construing agreements entered into between employers and employees. The High Court held that cls 2.1(d) and (e) and 3.1 of the supplementary agreement could not be read together harmoniously but individually in order to find the true intention of the parties and upon reading the differing clauses, it was concluded that cl. 2.1(d) and (e) of the supplementary agreement ought to prevail. The High Court further held that the main purpose and intention of entering into the supplementary agreement was to facilitate the redevelopment exercise. Therefore, cl. 3.1 ought to be rejected because it completely defeated the real intention of the parties as contained in cl. 2.1(d) of the supplementary agreement. The decision of the High Court was upheld by the Court of Appeal. Hence, leave to appeal was granted to the appellant on a question as to whether a collective agreement or terms and conditions of employment can be unilaterally imposed by an employer on a union without going through the collective bargaining process provided for in the Industrial Relations Act 1967 ('IRA 1967').

Held (allowing appeal with costs)
Per Richard Malanjum CJ (Sabah & Sarawak) delivering the judgment of the court:

(1) When making an award under the IRA 1967, the Industrial Court must keep in mind the rationale in s. 30(5), that the ordinary rules of construction whose assistance courts often pray in aid to determine contractual intention do not apply when interpreting a collective agreement. Due recognition should be accorded to the fact that a collective agreement is not a commercial document entered into between businessmen aided by legal advice. A collective agreement deals with far more basic issues that relate to the livelihood of workmen. (para 24)

(2) The legal implication of s. 17 of the IRA 1967 is that once a collective agreement has been taken cognizance of by the Industrial Court, it shall be deemed to be an award and shall be binding on the parties referred to in the said section. Both the old collective agreement and the supplementary agreement in the present case had been given cognisance. As such they are binding on all the parties involved including the appellant and the respondent. As long as the old collective agreement and the supplementary agreement were still valid, the parties to them are

bound by their terms and conditions. Therefore, the respondent would have no power to impose unilateral terms and conditions of employment on the employees represented by the appellant if a valid collective agreement existed between the parties. (paras 27-29 & 32)

(3) The supplementary agreement was entered: (i) to assure the continuance of the relationship of the appellant with the respondent during the closure of the old hotel; and (ii) for the reservation of 100 positions of various categories in the new hotel for the former employees of the old hotel. Clause 3.1 of the supplementary agreement stipulated that, upon the opening of the new hotel, the supplementary agreement would expire and the old collective agreement 'shall continue to apply for such period as provided for in the said collective agreement as if this supplementary agreement had not been entered into'. Hence, the respondent could no longer refer to cl. 2.1 of the supplementary agreement on the opening of the new hotel. At the same time, the respondent could not say that the old collective agreement had been terminated or varied by the supplementary agreement. There was nothing in the supplementary agreement to support such argument. (paras 34, 35 & 36)

(4) The terms and conditions of employment for the 100 positions reserved for the former employees of the old hotel and represented by the appellant must therefore be in accordance with the old collective agreement. The appellant had its continued recognition under the new hotel while the respondent successfully without further disruption completed the redevelopment exercise. It would be most unfair to the appellant if upon the successful and peaceful completion of the redevelopment exercise the respondent could simply refuse to recognise the old collective agreement even though it was never terminated. Thus, the very purpose and intention of the supplementary agreement would have been defeated and the respondent would have secured what it wanted from the appellant in return for nothing. (paras 37 & 38)

Bahasa Malaysia *Headnotes*

Responden, dahulunya dikenali sebagai Shangri-La's Rasa Sayang Resort ('hotel lama'), memiliki dan menguruskan Shangri-La's Rasa Sayang Resort and Spa ('hotel baru'). Responden melaksanakan pembangunan semula dan penempatan semula hotel lama (pelaksanaan pembangunan semula) yang mengakibatkan penghentian sama sekali perniagaan dan penutupan hotel lama dari 1 Disember 2004. Kesemua pekerja-pekerja yang diwakili perayu, sebuah kesatuan sekerja, diberhentikan. Ahli-ahli perayu termasuk pekerja-pekerja hotel lama dan hotel baru. Tidak berpuas hati dengan pemberhentian, pekerja-pekerja hotel lama berpiket. Responden dan perayu bersetuju untuk berunding dan bersetuju atas terma-terma pemberhentian tertentu, antara lain, 100 jawatan dalam pelbagai kategori akan ditawarkan kepada pekerja-pekerja yang diberhentikan semasa pembukaan hotel baru. Oleh itu, responden memasuki kontrak-kontrak pekerjaan dengan pekerja-pekerja

hotel baru atas terma-terma dan syarat-syarat baru. Responden dan perayu menandatangani perjanjian kolektif ke-10 bertarikh 19 Jun 2003 ('perjanjian kolektif lama') dan kemudian memeterai perjanjian tambahan bertarikh 13 Januari 2005 ('perjanjian tambahan'). Perayu tidak bersetuju dengan tindakan responden dalam pentafsiran kl. 2.1(d) dan 3.1 perjanjian tambahan dan responden oleh itu memohon ke Mahkamah Perusahaan bagi pentafsiran klausa-klausa tersebut. Mahkamah Perusahaan memutuskan peruntukan-peruntukan kl. 2.1(d) dan 3.1 perjanjian tambahan perlu dibaca bersama. Peruntukan dalam kl. 2.1(d)(iii) tidak memberikan responden kuasa untuk mengenakan terma-terma baru pekerjaan secara unilateral bagi pekerja-pekerja di bawah skop perjanjian. Perjanjian tambahan tamat apabila hotel baru dibuka semula dan perjanjian kolektif lama dikuatkuasakan semula dari tarikh pembukaan semula hotel baru. Mahkamah Perusahaan juga menyatakan bahawa perjanjian kolektif alam tidak dibatalkan pada masa pemeteraian perjanjian tambahan, di mana kl. 3.1 perjanjian tambahan memperuntukkan bahawa perjanjian kolektif lama 'akan terus diguna pakai seakan-akan perjanjian tambahan tidak dimeterai semasa pembukaan semula hotel'. Atas permohonan untuk semakan kehakiman oleh responden, Mahkamah Tinggi membatalkan award tersebut yang telah memutuskan bahawa mahkamah-mahkamah tidak sepatutnya mentafsir perjanjian yang dimasuki antara majikan-majikan dan pekerja-pekerja dengan terlalu bersifat keundangan. Mahkamah Tinggi memutuskan bahawa kl. 2.1(d) dan 3.1 perjanjian tambahan tidak boleh dibaca bersama-sama secara harmoni tetapi secara berasingan untuk mencapai niat sebenar pihak-pihak dan selepas membaca klausa-klausa yang berbeza itu, memutuskan bahawa kl. 2.1(d) dan 3.1 perjanjian tambahan wajar kekal. Mahkamah Tinggi selanjutnya memutuskan bahawa tujuan dan niat utama memasuki perjanjian tambahan adalah untuk membantu pelaksanaan pembangunan semula. Oleh itu, klausa 3.1 wajar ditolak kerana ia mematahkan sepenuhnya niat sebenar pihak-pihak seperti yang terkandung dalam kl. 2.1(d) perjanjian tambahan. Keputusan Mahkamah Tinggi disahkan oleh Mahkamah Rayuan. Oleh itu, kebenaran merayu diberikan kepada perayu atas persoalan sama ada perjanjian kolektif atau terma-terma dan syarat-syarat pekerjaan boleh dikenakan secara unilateral oleh majikan atas kesatuan sekerja tanpa melalui proses perundingan kolektif yang diperuntukkan dalam Akta Perhubungan Perusahaan 1967 ('Akta 1967').

Diputuskan (membenarkan rayuan dengan kos)
Oleh Richard Malanjum HB (Sabah & Sarawak) menyampaikan penghakiman mahkamah:

(1) Apabila membuat award di bawah Akta 1967, Mahkamah Perusahaan mesti mengambil kira rasional dalam s. 30(5), bahawa kaedah-kaedah pentafsiran yang mahkamah selalu gunakan untuk membantu menentukan niat kontrak tidak terpakai apabila mentafsir perjanjian kolektif. Pengiktirafan yang sewajarnya perlu diberikan pada fakta

bahawa perjanjian kolektif bukan dokumen komersial yang dimasuki antara ahli-ahli perniagaan yang dinasihati dari segi undang-undang. Perjanjian kolektif menguruskan isu-isu yang lebih asas berkaitan dengan sara hidup pekerja-pekerja.

(2) Implikasi s. 17 Akta 1967 dari segi undang-undang adalah, sebaik sahaja perjanjian kolektif diktiraf oleh Mahkamah Perusahaan, ia sepatutnya dianggap sebagai award dan mesti mengikat pihak-pihak yang dirujuk dalam seksyen tersebut. Kedua-dua perjanjian kolektif dan perjanjian tambahan dalam kes ini telah diberi pengiktirafan. Oleh itu, ia mengikat kesemua pihak-pihak yang terlibat termasuk perayu dan responden. Berikutan itu, selagi perjanjian kolektif lama dan perjanjian tambahan masih sah, pihak-pihak kepadanya terikat dengan terma-terma dan syarat-syaratnya. Oleh itu, responden tiada kuasa untuk mengenakan terma-terma dan syarat-syarat pekerjaan unilateral terhadap pekerja-pekerja yang diwakili oleh perayu jika perjanjian kolektif sah wujud antara pihak-pihak.

(3) Perjanjian tambahan dimasuki: (i) untuk memastikan kesinambungan hubungan antara perayu dan responden semasa penutupan hotel lama; dan (ii) untuk menyimpan 100 jawatan dalam pelbagai kategori di hotel baru bagi bekas pekerja-pekerja hotel lama. Klausa 3.1 perjanjian tambahan menyatakan bahawa, apabila hotel baru dibuka, perjanjian tambahan akan tamat dan perjanjian kolektif lama 'akan terus diguna pakai bagi tempoh yang diperuntukkan dalam perjanjian kolektif tersebut seakan-akan perjanjian tambahan tidak dimeterai'. Oleh itu, responden tidak boleh lagi merujuk pada kl. 2.1 perjanjian tambahan selepas hotel baru dibuka. Pada masa yang sama, responden tidak boleh menyatakan bahawa perjanjian kolektif lama telah dibatalkan atau diubah oleh perjanjian tambahan. Tiada apa-apa dalam perjanjian tambahan untuk menyokong hujahan sedemikian.

(4) Terma-terma dan syarat-syarat pekerjaan bagi 100 kedudukan yang disimpan bagi bekas pekerja-pekerja hotel lama dan diwakili oleh perayu oleh itu mesti mengikut perjanjian kolektif lama. Perayu masih terus diiktiraf di bawah hotel baru sementara responden berjaya menyiapkan pelaksanaan pembangunan semula tanpa halangan. Adalah tidak adil kepada perayu jika, selepas penyiapan penuh pelaksanaan pembangunan semula secara aman, responden boleh bersahaja menafikan untuk mengiktiraf perjanjian kolektif lama walaupun ia tidak pernah dibatalkan. Dengan itu, tujuan dan niat sebenar perjanjian tambahan akan dinafikan dan responden akan memperoleh apa yang ia mahukan daripada perayu tanpa apa-apa balasan.

Case(s) referred to:
Alam Venture Sdn Bhd & Anor v. Abdul Aziz Abdul Majid & Ors [2015] 5 CLJ 1 FC ***(refd)***
Forbes v. Git (1922) 1 AC 256 ***(refd)***
Kesatuan Pekerja-Pekerja Perkayuan v. Syarikat Jengka Sdn Bhd [1997] 2 CLJ 276 CA ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 96
Industrial Relations Act 1967, ss. 17, 30(5)

For the appellant - Ambiga Sreenevasan, Shireen Selvaratnam & Quah Su Enn; M/s Sreenevasan
For the respondent - Firoz Hussein, Cheng Mai & Choo Shi Jin; M/s Zaid Ibrahim & Co

[Editor's note: For the Court of Appeal judgment, please see National Union of Hotel, Bar and Restaurant Workers Peninsular Malaysia v. Shangri-la Hotels (Malaysia) Bhd [2014] 1 LNS 1771 (overruled).]

Reported by S Barathi

JUDGMENT

Richard Malanjum CJ (Sabah & Sarawak):

Preliminary

[1] This is an appeal by the National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia against the decision of the Court of Appeal dated 2 September 2014. The Court of Appeal upheld the decision of the High Court, *inter alia*, quashing the award of the Industrial Court dated 8 April 2011 (Award No. 468 of 2011 - the award).

[2] Leave to appeal to this court was granted to the appellant on 2 September 2014 on a leave question that reads:

> Whether a collective agreement or terms and conditions of employment can be unilaterally imposed by an employer on a union without going through the collective bargaining process provided for in the Industrial Relations Act 1967.

Background Facts

[3] The respondent, Shangri-La Hotels (M) Bhd, owns and operates Shangri-La's Rasa Sayang Resort and Spa (the new hotel) at Batu Feringgi, Penang. It was formerly known as Shangri-La's Rasa Sayang Resort (the old hotel).

[4] The respondent went on a major redevelopment and repositioning exercise of the old hotel (redevelopment exercise) that resulted in a complete business cessation and closure of the old hotel from 1 December 2004. All employees represented by the appellant were retrenched.

[5] The appellant is a trade union. It represents its members who are now employed by the new hotel. These members were also former employees of the old hotel.

[6] The respondent and the appellant had signed the 10th collective agreement dated 19 June 2003, cognizance number 209/2003 (the old collective agreement). The parties then entered into a supplementary agreement dated 13 January 2005, cognizance number 2-209-2003-5 (the supplementary agreement).

[7] Employees of the old hotel were dissatisfied with the retrenchment and they picketed. The respondent and the appellant agreed to negotiate and agreed on certain terms of retrenchment. There were 100 positions of various categories offered to the retrenched employees on the opening of the new hotel.

[8] The new hotel was only opened on 28 September 2006 though recruitment of employees began in May 2006. The respondent entered into contracts of employment with employees of the new hotel on new terms and conditions.

[9] The appellant disagreed with the action of the respondent on the interpretation of cls. 2.1(d) and 3.1 of the supplementary agreement. The respondent applied to the Industrial Court for the interpretation of those clauses.

In The Industrial Court

[10] The Industrial Court in handing down the award ruled that the provisions in cl. 2.1(d) and cl. 3.1 of the supplementary agreement must be read together. The provision in cl. 2.1(d)(iii) did not give the respondent the power to impose unilaterally new terms of employment for those employees under the scope of the agreement who were reemployed on the reopening of the new hotel. The supplementary agreement had come to an end when the new hotel reopened and the old collective agreement was reinforced from the date of the reopening of the new hotel. It was also noted by the Industrial Court that the old collective agreement had not been terminated at the time of signing of the supplementary agreement. And cl. 3.1 of the supplementary agreement provided that the old collective agreement 'would continue to apply as if the supplementary agreement had not been entered upon reopening of the hotel'.

In The High Court

[11] On the application for judicial review by the respondent, the learned High Court Judge quashed the award. He was of the view that the parties had the benefit of advice from their respective lawyers when the old collective and supplementary agreements were respectively negotiated and concluded. As such, the learned High Court Judge was of the view that under such circumstances the advice by the Court of Appeal in *Kesatuan Pekerja-Pekerja Perkayuan v. Syarikat Jengka Sdn Bhd* [1997] 2 CLJ 276 for courts not to be overly legalistic in construing agreements entered into between employers and employees need not be strictly adhered to.

[12] Further, the learned High Court Judge held that s. 30(5) of the Industrial Relations Act 1967 (IRA 1967) 'ought to be understood to render justice to the deserving' and that each case would have to be weighed on its own factual circumstances on an equal footing.

[13] Thus, the learned High Court Judge was of the view that cls. 2.1(d) and (e) and cl. 3.1 of the supplementary agreement could not be read together harmoniously but individually in order to find the true intention of the parties. As such, upon reading the differing clauses, the learned High Court Judge came to the conclusion that cl. 2.1(d) and (e) of the supplementary agreement ought to prevail.

[14] The learned High Court Judge was also of the view that the main purpose and intention of entering into the supplementary agreement was to facilitate the redevelopment exercise in order for the old hotel to be viable in the long run. Further, the learned High Court Judge opined that under such circumstances, cl. 3.1 ought to be rejected because it completely defeated the real intention of the parties as contained in cl. 2.1(d) of the supplementary agreement. Clause 3.1 is also meaningless in view of the real intention of the parties in entering into the supplementary agreement. Thus, reverting to the terms of the 'old collective agreement would have defeated the entire spirit and purpose' of the supplementary agreement.

In The Court of Appeal

[15] The Court of Appeal upheld the decision of the learned High Court Judge. In fact, the Court of Appeal accepted the reasons and the legal principles adopted by the learned High Court Judge.

Before This Court

Contentions Of Parties

[16] Before us, learned counsel for the appellant submitted that the leave question should be answered in the negative because to permit the respondent to ignore the old collective agreement and be allowed to unilaterally impose new terms and conditions of employment on the employees represented by the appellant would be in violation of the IRA 1967 and would also defeat the purpose of the appellant as the trade union for the employees. It was further argued that the learned High Court Judge and the Court of Appeal erred in departing from the principles enunciated in *Kesatuan Pekerja-Pekerja Perkayuan v. Syarikat Jengka Sdn Bhd (supra)*.

[17] In response, learned counsel for the respondent submitted, *inter alia*, that this court should decline to answer the leave question simply because the present case revolved only on the interpretation of the impugned clauses in the supplementary agreement. The purported point of law embedded in the leave question is not predicated on the actual facts and circumstances of the present case. It is not therefore within the scope of s. 96 of the Courts of Judicature Act 1964. At best it is a pure academic question.

[18] Further, it was contended that the only reason for the respondent to agree to enter into the supplementary agreement was in the spirit of goodwill and industrial harmony. The appellant was concerned with its recognition in the new hotel since all the employees of the old hotel represented by the appellant had been retrenched due to the closure.

[19] Learned counsel for the respondent also argued that there would be disparity if employees represented by the appellant are allowed to have the benefit of the old collective agreement while other new employees are given new and different terms and conditions of employment. At any rate, reference to the term 'collective agreement' in cl. 3.1 of the supplementary agreement must necessarily mean new terms and conditions of employment and does not refer to the old collective agreement. He further added that the supplementary agreement had varied the old collective agreement.

[20] As regards the apparent contradictions between cls. 2.1 and 3.1, learned counsel for the respondent submitted that the later clause should be ignored since to uphold it would destroy altogether the obligation created in the earlier clause. The Privy Council case of *Forbes v. Git* [1922] 1 AC 256 was cited to support the argument.

Decision Of This Court

[21] In order to answer the leave question, it is appropriate to first consider the relevant section or sections in the IRA 1967.

[22] Section 30(5) of the IRA 1967 reads:

> The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

[23] The foregoing section has been given judicial consideration by the Court of Appeal in the case of *Kesatuan Pekerja-Pekerja Perkayuan v. Syarikat Jengka Sdn Bhd (supra)* and subsequently approved by this court in the case of *Alam Venture Sdn Bhd & Anor v. Abdul Aziz Abdul Majid & Ors* [2015] 5 CLJ 1; [2015] 4 MLJ 270.

[24] In *Kesatuan Pekerja-Pekerja Perkayuan v. Syarikat Jengka Sdn Bhd (supra)* the Court of Appeal explained that when making an award under the IRA 1967, the Industrial Court must keep in mind the rationale in s. 30(5). This is what the court said at pp. 284-285:

> Accordingly, in our judgment, the question that lies at the heart of this appeal is one of pure construction. What calls for resolution is the question whether the parties, objectively speaking, intended that the collective agreement should continue in existence until a fresh agreement was negotiated. That intention is, of course, to be ascertained from the language employed by the parties in the collective agreement. However, before embarking upon that exercise, it is important for us to bear in mind

two broad and general matters that govern the approach that is to be adopted when interpreting a document such as that which has fallen for construction in the present case.

First, it is important to bear in mind that the ordinary rules of construction whose assistance Courts often pray in aid to determine contractual intention do not apply when interpreting a collective agreement. An application of these rules will necessarily involve a rather strict and legalistic approach which is to be avoided in a case such as the present. Parliament, fully realizing that a just solution may not result in the field of industrial relations by the application of the rules of interpretation that operate in the environment of the common law, has enacted s. 30(5) of the Act, which reads as follows:

> The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

Secondly, due recognition should be accorded to the fact that a collective agreement is not a commercial document entered into between businessmen aided by legal advice. A collective agreement deals with far more basic issues that relate to the livelihood of workmen, such as their wages and other rudimentary benefits that are essential for sustaining life. It will therefore be unsurprising to find such agreements couched in rather loose language, often lacking the degree of precision with which lawyers are familiar. A reasonable and pragmatic approach, shorn of an excess of legal learning, is therefore called for when construing a collective agreement, and in particular, any machinery that the workmen and their employer have established for the resolution of their differences.

[25] Thus, until such time as this principle is overruled, it remains applicable and forms part of the *corpus juris* of this country. As such, any industrial dispute that comes for judicial adjudication should therefore be adjudicated with such principle in mind. There is no necessity to import another principle that may not be in tandem with the rationale of s. 30(5) of IRA 1967.

[26] Section 17 of IRA 1967 states:

Effect of collective agreement.

(1) A collective agreement which has been taken cognizance of by the Court shall be deemed to be an award and shall be binding on:

(a) the parties to the agreement including in any case where a party is a trade union of employers, all members of the trade union to whom the agreement relates and their successors, assignees or transferees; and

(b) all workmen who are employed or subsequently employed in the undertaking or part of the undertaking to which the agreement relates.

A (2) As from such date and for such period as may be specified in the collective agreement it shall be an implied term of the contract between the workmen and employers bound by the agreement that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the agreement unless varied by a subsequent agreement or a decision of the Court.

B **[27]** One of the legal implications in s. 17 is that once a collective agreement has been taken cognizance of by the Industrial Court it shall be deemed to be an award and shall be binding on the parties referred to in the said section.

C **[28]** In the present case, there is no dispute that both the old collective agreement and the supplementary agreement have been given cognizance. As such, they are binding on all the parties involved including the appellant and the respondent.

D **[29]** It follows that as long as the old collective agreement and the supplementary agreement are still valid the parties to them are bound by their terms and conditions.

[30] The IRA 1967 also provides the process to be followed in coming up with a collective agreement which is defined as 'an agreement in writing concluded between an employer or a trade union of employers on the one E hand and a trade union of workmen on the other relating to the terms and conditions of employment, and work of workmen or concerning relations between such parties'. Basically, the parties are required to negotiate and upon concluding an agreement it is necessary to secure cognizance from the Industrial Court as provided for under s. 17. There is no provision that F allows for unilateral imposition of terms and conditions of employment by an employer or a trade union of employers upon members represented by a trade union of workmen.

[31] It is therefore obvious that the answer to the leave question must be in the negative.

G **[32]** Reverting to the present case, the respondent would have therefore no power to impose unilateral terms and conditions of employment on the employees represented by the appellant if there still exists a valid collective agreement between the parties.

H **[33]** The impugned clauses in the supplementary agreement read:

Clause 2.1(d):

The Company agrees that upon the re-opening of the Hotel in furtherance to the Redevelopment/Renovation Exercise, the Company shall ensure that a minimum of 100 positions of various categories are I offered to the said Employees on the following basis:

(i) The Company shall determine the organisation structure, category and position of such vacancies;

(ii) All the said Employees who which to be employed shall have the right to apply for any such vacancies. The Company shall ensure that applications from the said Employees shall be considered favourably;

(iii) Such said Employees will be employed upon new terms and conditions as may be set by the Company.

...

Clause 3: Duration and Limitation

3.1. It is hereby agreed between the parties hereto that this Supplementary Agreement shall expire and become null and void upon re-opening of the Hotel. Thereafter the provisions of the said Collective Agreement shall continue to apply for such period as provided for in the said Collective Agreement as if this Supplementary Agreement had not been entered into.

Clause 3.2 provides:

> It is hereby agreed between the parties hereto that the provisions of this Supplementary Agreement is entered into because of the special circumstances arising from the Closure and Redevelopment/Renovation exercise and shall not be treated as a precedent or basis of any future negotiations.

[34] In our view, the supplementary agreement was entered mainly for two purposes, that is, to assure the continuance of the relationship of the appellant with the respondent during the closure of the old hotel and for the reservation of 100 positions of various categories in the new hotel for the former employees of the old hotel who were represented by the appellant.

[35] But the supplementary agreement had a life span. By cl. 3.1 of the supplementary agreement, it was stipulated that upon the opening of the new hotel the supplementary agreement would expire and the old collective agreement 'shall continue to apply for such period as provided for in the said collective agreement as if this supplementary agreement had not been entered into'.

[36] The respondent could no longer refer to cl. 2.1 of the supplementary agreement on the opening of the new hotel. At the same time, the respondent could not be heard to say that the old collective agreement had been terminated or varied by the supplementary agreement. There was nothing in the supplementary agreement to support such argument.

[37] As such, the terms and conditions of employment for the 100 positions reserved for the former employees of the old hotel and represented by the appellant must therefore be in accordance with the old collective agreement.

[38] We are of the view that our above approach to the supplementary and old collective agreements is fair and equitable for both parties. The appellant had its continued recognition under the new hotel while the respondent

successfully without further disruption completed the redevelopment exercise. It would be most unfair to the appellant if upon the successful and peaceful completion of the redevelopment exercise the respondent could simply refuse to recognise the old collective agreement even though it was never terminated. The very purpose and intention of the supplementary agreement would have been defeated. The respondent would have secured what it wanted from the appellant in return for nothing.

Conclusion

[39] As indicated earlier, we answer the leave question in the negative and for the reasons given, we allow this appeal with costs. The decisions of the High Court and the Court of Appeal are therefore set aside. The award of the Industrial Court is reinstated with the respondent obliged to implement the old collective agreement forthwith.